

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 17, 2008

ROMAN REYES v. STATE OF TENNESSEE

Appeal from the Circuit Court for Davidson County
No. 08C316 Walter C. Kurtz, Judge

No. M2008-00608-CCA-R3-HC - Filed July 29, 2009

The pro se petitioner, Roman Reyes, appeals as of right the Davidson County Circuit Court's summary dismissal of his petition for a writ of habeas corpus challenging his conviction for second degree murder. The petitioner alleges that the judgment is void due to an illegal sentence imposed in contravention to Blakely v. Washington. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Roman Reyes, Nashville, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Lacy Wilber, Assistant Attorney General, Nashville, Tennessee, attorneys for appellee, State of Tennessee.

OPINION

The petition reflects that on August 2, 2005, the petitioner entered a guilty plea to second degree murder and received a sentence of twenty-five years to be served at one hundred percent. On January 30, 2008, the petitioner filed a petition for a writ of habeas corpus alleging that his judgment was void because "the trial court did not have the authority to impose a sentence of this type, thereby violating the Petitioner's 6th Amendment Right to trial by jury to determine any enhancement factors." On February 15, 2008, the State filed a responsive motion arguing that the petitioner failed to state a cognizable claim for habeas corpus relief, reasoning that the Blakely allegation would render the judgment merely voidable and not void. On March 10, 2008, the habeas corpus court summarily dismissed the petition citing, as one basis, the petitioner's failure to state a cognizable claim for relief. A timely notice of appeal followed.

ANALYSIS

In Tennessee, the grounds upon which habeas corpus relief may be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 432 S.W.2d 656 (Tenn. 1968); State ex rel. Wade v. Norvell, 443 S.W.2d 839 (Tenn. Crim. App. 1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel. Newsome v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1969). A void, as opposed to a voidable, judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” See Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A court may summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petition does not state a cognizable claim. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

In Blakely v. Washington, 542 U.S. 296 (2004), the Supreme Court held that any fact other than that of a prior conviction used to enhance a defendant’s sentence must be proven to a jury beyond a reasonable doubt. Blakely, 542 U.S. at 301. The petitioner’s claim of an erroneously enhanced sentence is not cognizable in a habeas corpus case because the claim, even if proven, would render the judgment voidable, not void. See Ulysses Richardson v. State, No. W2006-01856-CCA-R3-PC, 2007 WL 1515162, at *3 (Tenn. Crim. App. May 24, 2007) (stating that “even a valid Blakely claim renders a conviction voidable, not void, and is thus non-cognizable in habeas corpus review”) app. denied (Tenn. Sept. 17, 2007). Additionally, this Court has repeatedly held that Blakely and its progeny did not create a new rule of law entitled to retroactive application in the context of a collateral, habeas corpus proceeding. See, e.g., Gary Wallace v. State, No. W2007-01949-CCA-R3-CO, 2008 WL 2687698, at *2 (Tenn. Crim. App. July 2, 2008); Glen Cook v. State, No. W2006-01514-CCA-R3-PC, 2008 WL 821532, at *10 (Tenn. Crim. App. Mar. 27, 2008) app. denied (Tenn. Sept. 29, 2008); Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486, at *7 (Tenn. Crim. App. Nov. 13, 2007) app. denied (Tenn. Apr. 7, 2008). The petitioner has stated neither a claim of a void judgment, that is, one that the trial court was without authority to enter, nor one of an expired sentence. Therefore, we conclude that the trial court properly dismissed the petition.

CONCLUSION

Upon due consideration of the pleadings, the record, and the applicable law, this court concludes that the petitioner has not established that he is entitled to habeas corpus relief. The judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE